

**TOWN OF TUFTONBORO
PLANNING BOARD
November 15, 2018
MINUTES**

Members Present: Matt Young, Vice-Chairman, Bill Marcussen, Selectmen's Representative, Jack Parsons, Kate Nesbit, Members

Members Absent: John Cameron, Chairman, Tony Triolo, Laureen Hadley, Members, Russ Steensma, Alternate.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Vice-Chairman Young opened the meeting at 7:00 PM.

I. Public Comment

None.

II. Consideration of Minutes

October 18, 2018

It was moved by Bill Marcussen and seconded by Kate Nesbit to approve the October 18, 2018 Tuftonboro Planning Board minutes as submitted. All members voted in favor. The motion passed.

III. Scheduled Appointments/Public Hearings

Merrimack Valley Development Corp.

Consolidation of 7 Lots and Re-subdivision of 2 Lots

Tax Map #60-1-2, 29, 30, 31, 32, 33 & 34

Matt Young stated he sought an opinion from Roger Murray regarding several concerns he had regarding the application, see attached email. He stated Attorney Murray submitted a response, see attached, and requested a motion to release the opinion.

It was moved by Jack Parsons and seconded by Kate Nesbit to release Planning Board Counsel's opinion, via an email dated November 15, 2018. All members voted in favor. The motion passed.

Staff provided David Jordan a copy of the opinion and Matt Young's email.

Matt Young reviewed his email and read Attorney Murray's opinion and noted there are two issues; resolution of the right-of-way and that the covenants are still binding.

David Jordan, MHF Design Consultants, Inc., stated he is currently working to address the right-of-way issue; noting a legal description is being drafted.

Matt Young stated that if the right-of-way is the only access to the lot in Ossipee then that lot becomes a fourth lot. He asked Mr. Jordan how he would like to proceed; preliminary consultation or accept jurisdiction and continue the application.

David Jordan stated he would prefer the Board take jurisdiction and continue the application.

It was moved by Jack Parsons and seconded by Kate Nesbit to accept jurisdiction of the application. All members voted in favor. The motion passed.

David Jordan stated the proposal is to consolidate seven lots and re-subdivide the land into two lots accessed by a private way off of Black Bear Run and Zadedda Farm Lane. He reviewed the subdivision plans noting the private way would also access the Snyder lot and easement rights over the private way would be provided to that lot. With regard to the land located in Ossipee, he stated the easement shown on the plan is in the original location noted on the previous approved Shaw View Subdivision plan. He stated that property has been identified by metes and bounds and an agreement between the applicant and owner of that parcel is being drafted. He access to the proposed lots needs to be further reviewed based on Attorney Murray's opinion.

Jack Parsons asked if access would be private or a Town road.

David Jordan stated the owner will determine such.

Jack Parsons noted the required width of a Town road is 22' and the required width of a private way is 18'.

Matt Young stated he is supportive of the proposal.

Vice-Chairman Young opened the public hearing.

Dave Ford, abutter, stated the previous owner created an easement to construct a road to access the lot in Ossipee and questioned whether it could be a Town road given the grade of the land. He stated he doesn't think it's feasible to build a Town road.

David Jordan agreed with Mr. Ford.

Matt Young stated that right-of-ways are virtually impossible to abolish.

Dave Ford stated it appears to be overkill to build the original road. He noted the easement on his property would no longer be needed with the new proposed subdivision.

David Jordan agreed.

Dave Ford asked if underground utilities are proposed.

David Jordan replied yes.

It was moved by Kate Nesbit and seconded by Jack Parsons to continue the public hearing for Merrimack Valley Development Corporation to December 20, 2018. All members voted in favor. The motion passed.

**Ed Bean and Melvin Bean
2-Lot Subdivision
Tax Map #16-2-20**

Matt Young stated the application is complete.

It was moved by Jack Parsons and seconded by Kate Nesbit to accept jurisdiction of the application. All members voted in favor. The motion passed.

Ed Bean stated he and his brother wish to subdivide his father's lot by splitting the parcel in half and adding the land to each of their parcels which abut the property.

Vice-Chairman Young opened the public hearing.

There being no questions or comments, Vice-Chairman Young closed the public hearing.

Matt Young confirmed there are no waivers being requested and reviewed the following conditions of approval;

1. The applicant shall set boundary monuments.
2. The applicant shall provide a Certificate of Monumentation.
3. The applicant shall submit a revised plan depicting the setting of the monuments and submit a Mylar plan for recording.
4. The applicant shall submit recording fees.

Jack Parsons asked if the gravel driveway on the property being divided is still used.

Ed Bean replied yes.

Jack Parsons asked if an easement exists for such.

Ed Bean replied no.

It was moved by Kate Nesbit and seconded by Jack Parsons to approve the Ed Bean and Melvin Bean Subdivision application, Tax Map #16-2-20, subject to the recommended conditions of approval. All members voted in favor. The motion passed.

**177 Middle Road Trust
Site Plan Review; Construction of a 30'x40' Metal Building
Tax Map #55-2-23**

Matt Young stated the application is complete.

It was moved by Jack Parsons and seconded by Kate Nesbit to accept jurisdiction of the application. All members voted in favor. The motion passed.

Justin Tetherly stated he is proposing to construct a 30'x40' metal building that will be located at the rear of the property.

Matt Young confirmed that equipment will be stored in the building. He asked if there are any conditions set by the ZBA.

Jack Parsons replied no.

Vice-Chairman Young opened the public hearing.

Steve Hunter, abutter, stated he is in favor of the proposal.

Bill Marcussen asked if there would be power to the building.

Justin Tetherly replied yes.

Jack Parsons questioned outdoor lighting.

Justin Tetherly stated there would be a light over the door.

Jack Parsons confirmed the lighting would be motion sensor and down directed.

Bill Marcussen asked if plumbing is proposed.

Justin Tetherly replied no.

There being no further questions or comments, Vice-Chairman Young closed the public hearing.

It was moved by Bill Marcussen and seconded by Kate Nesbit to approve the 177 Middle Road Trust Site Plan Review application, Tax Map #55-2-23, as submitted. All members voted in favor. The motion passed.

IV. Action Items

Appointment of Chairman and Vice-Chairman

Staff informed the Board that Tony Triolo is willing to step up as Vice-Chairman if so appointed.

It was moved by Jack Parsons and seconded by Kate Nesbit to appoint Matt Young as Chairman and Tony Triolo as Vice-Chairman of the Tuftonboro Planning Board. Jack Parsons, Kate Nesbit, Bill Marcussen voted in favor. Matt Young abstained. The motion passed.

LRPC Contract Extension

Staff reviewed the updated contract with LRPC for contracted services for the Master Plan update; noting the contract was extended to June 30, 2019.

It was moved by Kate Nesbit and seconded by Jack Parsons to accept the LRPC contract as written, for continued work on the Master Plan update and forward the contract to the BOS for signature and execution. All members voted in favor. The motion passed.

V. Discussion Items

a. Telephonic Participation

Bill Marcussen stated a member of the Board can participate at a meeting via telephone however, there must be a quorum present at the meeting, the participation must be audible, all votes are recorded as roll call votes and the person on the phone has to know who is speaking at the meeting. He stated it is not permissible to use telephonic participation as a way to meet a quorum. Relative to Right To Know compliance, he stated it is recommended that Staff send emails via blind copy to the Board.

b. Planning Board Membership

Staff informed the Board that Fenton Varney has expressed interest in requesting the BOS reconsider his request for appointment to the Planning Board.

Matt Young stated very few people want to do this work and have the knowledge to do it. He requested the BOS look very heavily at that.

VI. Informational Items

N/A

VII. Other Business

N/A

VIII. Public Comment

Joe Kowalski asked when the next meeting has been scheduled.

Staff replied December 6th and December 20th.

Steve Hunter and the Board engaged in a conversation regarding gravel pit operations.

It was moved by Jack Parsons and seconded by Kate Nesbit to adjourn the November 15, 2018 Tuftonboro Planning Board meeting. All members voted in favor.

There being no further business before the Board, the meeting adjourned at 8:00 PM.

Respectfully Submitted,

Lee Ann Hendrickson

-----Original Message-----

From: Mathew Young

To:

Subject: Merrimack Valley

Lee Ann,

I took a look at the proposed 3 lot subdivision again. I think there may be a problem from the ROW that exists through the back of the property. With the Schneider Lot there is 3 lots off of 1 Driveway. The ROW is the only access to another lot behind this property. If this lot was to attempt to build anything this would be 4 lots on 1 driveway. By approving this we would essentially be making this rear lot unbuildable.

The next problem is that this ROW is currently not defined. In talking to Jim Rines he believes that once a non-defined ROW is Platted it is official even if the dominant parcel is not notified. (I would bet he's probably right) This brings up another issue of whether the ROW once platted is in an area where access could be constructed due to terrain.

I believe we need an opinion of 1.) Whether a 3 house subdivision is allowed on this road without a special assessment, whether it would be required to have buried utilities or any other standard that the original development required. 2.) Opinion about the ROW at the rear of the property and whether that would count as 1 of the driveways.

I also believe the dominant parcel with the ROW should be in agreement with The Platting of the ROW regardless.

We should let the developer know these are the questions being sent to council so that they have the opportunity to respond.

I know you're busy so at your convenience.

Matt,

Sent from my iPhone

From: Roger Murray

Sent: Thursday, November 15, 2018 3:58 PM

To: hendrickson.leeann@gmail.com

Subject: Merrimack Valley Development, Corp.

PRIVILEGED AND CONFIDENTIAL

Matthew Young, Chair
Tuftonboro Planning Board

Matt,

The Planning Board has asked my opinion as to whether Merrimack Valley Development Corp.'s proposed subdivision would violate the provisions of Section IV of the Tuftonboro Subdivision Regulations. For the reasons set forth below, it is my considered opinion that it would. At the outset, I note that the Planning Board revoked the approval of former lots Map 60, Lots 1-28, 1-29, 1-30 (not identified on the plan), 1-31, 1-32, 1-33, 1-34 and a portion of what is now Shaw View Road so that those lots and the portion of the road no longer exist.

The plan submitted to the Planning Board shows proposed Lots 1-28 and 1-29, existing Lot 1-27 and Ossipee Tax Map 240, Lot 4 as having access over Shaw View Road which is shown as a 50 foot wide private right of way. Shaw View Road, which provides access to four house lots, would not qualify as a private driveway as that term is defined in Section 4.4.2, A. of the Subdivision Regulations. Rather, it would constitute a residential access street and would need to be constructed in accordance with the requirements of Section 4.5.4. When the property was conveyed to Merrimack Valley Development, Corp. by Quitclaim Deed of PBE Companies, LLC, dated October 22, 2013 and recorded at Book 3114, Page 373, the conveyance was subject to the Declaration of Restrictive Covenants dated, September 28, 2007, and recorded at Book 2664, Page 277 both in the Carroll County Registry of Deeds. Thus, the development of the property must comply with the Restrictive Covenants. Paragraph 15., J. of the Covenants states, "All utilities installed to any home must be placed underground. No poles and lines will be permitted." Paragraph 19 includes a statement that the roads and streets are being built to specifications established by the Town of Tuftonboro for public streets. A performance guarantee covering the cost of road construction and other improvements should be posted with the Town as required by Section 3.4 of the Subdivision Regulations.

You have also asked my opinion regarding the right of way serving Ossipee Tax Map 240, Lot 4. For the reasons set forth below, it is my opinion that the owner of Tax Map 240, Lot 4 and Merrimack need to address the location of the right of way. That right of way is described in the Foreclosure Deed of James P. Logan to James P. Logan, dated February 7, 2011, and recorded at Book 2914, Page 748, as "And together with said 118-Acre Tract a single Permanent Right-of-Way and Easement Appurtenant not less than fifty (50) feet in width and suitable for a road, exact location to be hereafter determined, on, over and across adjoining land of Zadede ... for use as a public or private road for the benefit of said 118-Acre Tract to provide for free and unfettered motor vehicle and pedestrian access to and from said 118-Acre Tract to and from a public road in Tuftonboro, New Hampshire."

It is my understanding that the exact location of the right of way has not been determined as prescribed in the easement language. Since the right of way impacts one of the proposed lots in the subdivision, it needs to be accurately shown on the plan. If the right of way is shown on the plan and it is identified as the right of way serving Tax Map 240, Lot 4, then that could be viewed as determining its location. However, the easement does not reserve to the owner of the property over which the right of way runs the right to unilaterally determine its location. The resolution of right of way issues does not fall within the purview of the Planning Board. It is my opinion that the two property owners need to resolve the location issue or at least come to an agreement regarding it.

Should you have any questions. please let me know.

Roger

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